

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
BILES-COLEMAN LUMBER COMPANY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 709

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER.

THIS MATTER being an appeal of the denial by respondent of an application for a tax exemption certificate having come on regularly for a formal hearing before the Pollution Control Hearings Board by way of Stipulation of Facts and written briefs; and appellant Biles-Coleman Lumber Company appearing through its attorney, Graham H. Fernald, and respondent Washington State Department of Ecology appearing through its Assistant Attorney General, Joseph J. McGoran; and the Board having considered the Stipulation of Facts, the contentions of the parties, and the supporting briefs submitted, and having entered on the 1st day of July

1 1975, its proposed Findings of Fact, Conclusions of Law and Order; and e
2 Board having served said proposed Findings, Conclusions and Order upon all
3 parties herein by certified mail, return receipt requested and twenty days
4 having elapsed from said service; and

5 Exceptions to said proposed Order and reply thereto having been
6 received, and said exceptions being granted in part in that this matter
7 was conducted as a formal hearing, and all other exceptions being denied;
8 and the Board being fully advised in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Finding
10 of Fact, Conclusions of Law and Order, dated the 1st day of July, 1975,
11 and incorporated by this reference herein and attached hereto as Exhibit A
12 are adopted and hereby entered as the Board's Final Findings of Fact,
13 Conclusions of Law and Order herein.

14 DONE at Lacey, Washington this 11th day of August, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 Chris Smith
17 CHRIS SMITH, Chairman

18 W. A. Gissberg
19 W. A. GISSBERG, Member

20 Walt Woodward
21 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
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STATE OF WASHINGTON,
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

An appeal of the denial by respondent of an application for a tax exemption certificate came before the Pollution Control Hearings Board at an informal hearing in Lacey, Washington. By agreement of the parties, this matter was submitted to the Board by way of Stipulation of Facts and written briefs.

Appellant was represented by its attorney, Graham H. Fernald; respondent was represented by Joseph J. McGoran, Assistant Attorney General.

Having considered the Stipulation of Facts, having considered the

EXHIBIT A

1 contentions of the parties and the supporting briefs submitted, and
2 being fully advised, the Pollution Control Hearings Board makes and adopts
3 the following Stipulation of Facts as its

4 FINDINGS OF FACT

5 I.

6 The appellant, the Biles-Coleman Lumber Company, is a corporation
7 authorized to do business in the State of Washington, with its principal
8 place of business in this state, at Omak, Washington.

9 II.

10 The respondent, the Department of Ecology, has adopted emission
11 control regulations limiting the opacity of visible emissions,
12 WAC 18-04-040, and the discharge of particulate from combustion and
13 incineration sources, WAC 18-04-050. These regulations require
14 generally that, effective July 1, 1975, visible emissions shall not
15 exceed 0.10 grains per standard cubic foot. Appellant is required to
16 comply with these regulations and to register with the respondent pursuant
17 to WAC 18-04-100(15).

18 III.

19 Appellant owns and operates a plywood plant at Omak. The plywood
20 plant has been operating for a number of years, and consists of the
21 following equipment: steam vats, veneer lathes, clippers, veneer dryer,
22 string machines, a layup line, an adhesive flo-coating machine, spreaders,
23 a press charger, a hot press, a press unloader, trim saws, a sander, a
24 sorting system and a strapping machine.

25 IV.

26 Plywood consists of thin bands of wood veneer glued together with

27 FINDINGS OF FACT,
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1 an adhesive, and with grain orientation usually in alternating directions.
2 The basic steps in manufacturing plywood are: steaming and peeling the
3 logs or veneer blocks, trimming and drying the veneer, and gluing the
4 veneer.

5 V.

6 The veneer blocks are placed in steam vats where the wood is heated
7 and saturated with moisture, to soften or plasticize the wood so that
8 peeling can be accomplished without breaking or shattering the wood.
9 After peeling, the veneer sheets have defects cut out of them and are
10 cut to size by clippers. The veneer is then fed into veneer dryers where
11 the moisture content of the veneer is reduced. Drying is a technological
12 necessity in the manufacture of plywood for three reasons: (1) the end
13 use of the plywood dictates that it be dry; (2) it would not be practical
14 to glue veneer layers together until the volumetric shrinkage that
15 occurs in drying is accomplished, and (3) with wet veneer it would not
16 be possible to use a steam press for setting the thermo-activated
17 adhesive.

18 VI.

19 To effect drying, the veneer is fed into dryers in multiple layers
20 and is carried on a series of power-driven rollers that move the veneer
21 sheets in a longitudinal direction. High temperature air is passed over
22 the veneer, and this air picks up moisture and water-soluable extractives
23 in the wood.

24 VII.

25 Because of the temperatures and air velocities involved, fine
26 particles of wood, unburned hydrocarbons and particulate are also picked

1 up and carried in the air stream, which is vented to the atmosphere, and
2 appears as the characteristic "blue haze" of the veneer dryer. It is
3 these hydrocarbons and particulate emissions which cause the dryer to
4 exceed permissible particulate emission levels established by the
5 respondent. "But for" these emission requirements, appellant's dryer
6 with proper maintenance would have operated satisfactorily indefinitely.

7 VIII.

8 There are two ways by which respondent's emission standards could be
9 met by appellant: by scrubbing or by incineration. The incinerator
10 method could be accomplished by either of two methods: appellant's
11 present burners, fired by propane, could be supplemented by an after-
12 burner or underburner; or replace the present propane burners with wood
13 burners while adding duct work to the wood burners thereby allowing a
14 reburning of previously emitted hydrocarbons and particulates.

15 IX.

16 The gas fired burner alternatives were rejected without detailed
17 capital investment cost figures being obtained thereon because appellant
18 was unsure as to their technological capability of meeting emission
19 requirements. Appellant now estimates that the underburner alternative
20 could be successfully installed for approximately \$300,000.

21 X.

22 Appellant's choice at the time when the decision was made, in
23 November, 1973, was to meet the Department's requirements through
24 incineration with wood burners. This method and the underburner method
25 and the scrubber method are suitable, reasonably adequate and meet
26 the intent and purpose of chapter 70.94 RCW. The appellant's wood

burner system is estimated to cost \$917,000 whereas both the underburner method and any scrubber method would have cost approximately \$300,000 or less.

XI.

Appellant chose the more expensive method. It chose to replace the present propane-fired burners with wood-fired burners and reburners. Appellant's present propane-fired burners, which were installed in 1970, are in good repair and could be used indefinitely with good maintenance, will be left intact, and appellant has no plans to dispose of them.

XII.

Appellant's opted wood burners replacement method will allow a 60 percent reduction in the need for the purchase of propane to operate the veneer dryer. Moreover, this replaced fuel source will now be fired from scraps from the plywood plant and wood wastes from other sources at the plant.

XIII.

The most expensive capital outlay method was selected for economic reasons, and not for reasons of pollution control, i.e., the wood burner systems allowed a long-run economic return to appellant, rather than no economic return from the scrubber or underburner.

XIV.

Another reason in choosing the wood burner method was because of a "potential public relations" problem with the use of the scrubber method. The latter method would create a steam plume which, while not in conflict with the Department of Ecology existing regulations, would be observed by the local citizens.

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XV.

The chosen method is primarily fired by a product under appellant's control rather than an outside source of energy which may not be reliable. Prior to appellant's decision to opt for the wood-burner systems, appellant had suffered intermittent scarcity of propane from its suppliers

XVI.

By using the wood-burner systems, the straight trade-off of the primary wood burners for the propane burners will not result in measurably less pollutants. The addition of the duct work thereby allowing for a reburning of hydrocarbons and particulates is necessary before the veneer dryer will be able to comply with Department of Ecology air emission regulations.

XVII.

Although the Department of Ecology completely denied approval of any portion of the veneer dryer, it states that upon reconsideration of the component costs breakdown, it will give partial approval. It is the Department of Ecology's position that only that portion of the veneer dryer which is a "pure pollution control facility", i.e., the duct work constituting the reburning unit, should be approved. The Department of Ecology maintains that no tax credit/exemption should be given for the replacement of the gas burners with the wood burners as both are necessary to the manufacture of plywood.

XVIII.

The Department of Ecology would have approved the cost of the scrubber or underburner, the "black box" technology had either alternative been chosen by appellant.

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XIX.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board makes the following

CONCLUSIONS OF LAW

I.

Appellant's modified veneer dryer is suitable, reasonably adequate and meets the intent and purposes of chapter 70.94 RCW.

II.

Appellant's modified veneer dryer meets the design test of RCW 82.34.030.

III.

Tax exemption/credit statutes are to be strictly construed against the claimed exemption. Strictly construing that part of RCW 82.34.030 which states:

"Such approval shall be given when . . . the facility is . . . operated or is intended to be operated primarily for the control, capture and removal of pollutants. . . ."

means that the operational test is not satisfied. Doubt and ambiguity exists. Therefore, the modified veneer dryer is neither operated nor intended to be operated primarily for air pollution control purposes.

IV.

RCW 82.34.010(1)'s definition of "facility" to include "any part or accessories thereof" allows the giving of a partial approval on chapter 82.34 RCW tax credit/exemption applications.

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V.

Installation and operation of the wood-burner systems is not necessary for the manufacture of products as that term is used in WAC 173-24-030 and 100 as appellant would continue indefinitely to operate the veneer dryer with propane-fired burners, but for the Department of Ecology's regulations. Appellant could not operate the veneer dryer without burners.

VI.

Chapter 82.34 RCW does not prohibit partial approval of a process change. That portion of a process change, i.e., the wood-burner systems, which represent the cost of the alternative "black box" scrubber or underburner, is operated or intended to be operated primarily for the purposes of air pollution control.

VII.

Only that portion of the process change which represents the cost of the scrubber or underburner, whichever is less, qualifies for the tax exemption and credit provided by chapter 82.34 RCW.

VIII.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Pollution Control Hearings Board enters this

ORDER

The Department of Ecology's denial of full approval for a certificate authorizing tax exemption and credit provided by chapter 82.34 RCW with respect to the modified veneer dryer at appellant's plywood plant at

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1 Omak is affirmed.

2 Further, this matter is remanded to the Department of Ecology for
3 its determination of the level of partial approval. In making that
4 redetermination, respondent shall approve that portion of the cost of the
5 wood-burner systems, up to 100 percent, which equals the cost of the
6 "black box" technology, scrubber or underburner system.

7 DATED this first day of July, 1975.

8 POLLUTION CONTROL HEARINGS BOARD

9 (see dissent)

10 CHRIS SMITH, Chairman

11 W. A. Gissberg
12 W. A. GISSBERG, Member

13 Walt Woodward
14 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
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SMITH dissenting:

I would substitute the following numbered Conclusions of Law for those found in the majority opinion:

IV.

Chapter 82.34 RCW makes no reference to tax exemption and credit for process changes designed to reduce pollution. However, RCW 82.34.010(1) defines "facility" to include "any part or accessories thereof," which allows the giving of partial approval for those portions of a facility whose primary purpose is pollution control.

VI.

WAC 173-24-060 states:

"In any case in which the applicant desires approval for all or part of any facility necessary for the manufacture of products, the applicant shall supply sufficient information to the Department to establish the basis for identification of a pollution control element in such facility." (emphasis added)

WAC 173-24-070 establishes standards for such identification:

"A portion of a facility may be identified conceptually as a pollution control element, even though physically part of a larger whole, if such identification can be reasonably made in view of Chapter 82.34, RCW, and the pollution control element so identified meets the requirements for approval set forth is [sic] WAC 173-24-080 through WAC 173-24-110."

Chapter 82.34 RCW does not authorize approval, for tax exemption and credit, of an amount of money which represents the cost of a pollution control facility, had it been built or installed. RCW 82.34.010 clearly limits applicability to physically identifiable facilities or systems.

Regrettably, the present system of tax exemptions and credits tends to discourage process changes and favor "black box" controls at the end of the line.

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1 A system which taxed effluent discharge, however, could be adjusted
2 to achieve any desired level of pollution abatement, allow an industry to
3 solve its pollution problem in an economically advantageous manner, and
4 stimulate development of "cleaner" manufacturing processes. (See
5 Pollution, Prices, and Public Policy," Brookings Institution, 1975.)

6 VII.

7 Only that portion of the facility change which meets the Operation
8 Test (WAC 173-24-100) qualifies for the tax exemption and credit approval
9 provided by chapter 82.34 RCW.

10

11 I would remand this matter to respondent for its determination of
12 the proper level of partial approval.

13 DONE at Lacey, Washington this 9th day of July, 1975.

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Chris Smith
CHRIS SMITH, Chairman

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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER